
In The
United States Court of Appeals
For The Federal Circuit

CARITAS TECHNOLOGIES, INC.,

Plaintiff – Appellant,

v.

**COMCAST CORPORATION, COMCAST CABLE
COMMUNICATIONS, LLC, COMCAST IP PHONE, LLC (doing
business as Comcast Digital Voice), and COMCAST IP PHONE II,
LLC, (Doing business as Comcast Digital Voice),**

Defendants – Appellees.

**APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS IN CASE NO. 2:05-CV-339,
JUDGE DAVID J. FOLSOM.**

BRIEF OF APPELLEES

**Daralyn J. Durie
Asim M. Bhansali
Matthias A. Kamber
KEKER & VAN NEST LLP
710 Sansome Street
San Francisco, California 94111-1724
(415) 391-5400**

Counsel for Appellees

Dated: March 5, 2007

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

CARITAS TECHNOLOGIES, INC. v. COMCAST CORP., et al.

2007-1057

CERTIFICATE OF INTEREST

Counsel for the Defendants-Appellees certifies the following:

1. The full name of every party or amicus represented by me is:

Comcast Corp.; Comcast Cable Communications, LLC; Comcast IP Phone, LLC, d/b/a Comcast Digital Voice; and Comcast IP Phone II, LLC, d/b/a Comcast Digital Voice

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

n/a

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

Comcast Corp.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

Keker & Van Nest LLP
710 Sansome Street
San Francisco, CA 94111-1704

- Daralyn J. Durie
- Brian L. Ferral
- Leo Lam
- Asim M. Bhansali
- Matthias A. Kamber
- Katherine J. Florey

- Eric MacMichael
- Steven Yoda (no longer with the firm)

Haltom & Doan, LLP

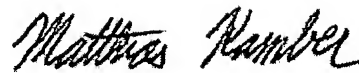
6500 N. Summerhill Road, Suite 1A

P. O. Box 6227

Texarkana, TX 75505-6227

- Jennifer Haltom Doan
- John Peyton Perkins, III

Date: March 5, 2007



Matthias A. Kamber

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STATEMENT OF RELATED CASES

(a) No other appeal in or from this civil action has previously been before this or any other appellate court.

(b) There are no other related cases pending before this Court that may affect or be directly affected by this Court's decision in this pending appeal.

STATEMENT OF JURISDICTION

This Court has appellate jurisdiction under 28 U.S.C. § 1295(a)(1). Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the district court entered judgment in favor of defendants-appellees Comcast Corp.; Comcast Cable Communications, LLC; Comcast IP Phone, LLC, d/b/a Comcast Digital Voice; and Comcast IP Phone II, LLC, d/b/a Comcast Digital Voice (collectively, “Comcast”) on plaintiff Caritas Technologies, Inc.’s (“Caritas”) claim that Comcast infringed U.S. Patent No. 6,661,779 (“the Caritas patent”). (A0001.) Further, the district court expressly determined that there is no just reason to delay an appeal of that judgment. (A0003.) The district court directed the entry of final judgment of non-infringement against Caritas under Rule 54(b), and stayed Comcast’s declaratory judgment counterclaims pending appeal (A0003.)

PRELIMINARY STATEMENT

This case involves Caritas's attempts to interpret the asserted claims to read on Comcast's Digital Voice (CDV) residential telephone service. CDV carries voice signals at least in part over an internet protocol (IP) network, which is a packet-switched network. Based on the claim language and the intrinsic evidence, interpreted as of the time of the 1996 invention, the district court construed the claim term "telephonic connection" to mean "a circuit-switched path between telephone devices on a circuit-switched network." A circuit-switched network—for example, the Public Switched Telephone Network (PSTN)—differs from a packet-switched network—for example, the Internet—in that it uses dedicated paths (*i.e.*, circuits) between the end points of a connection. For this reason, based on the district court's construction of "telephonic connection," Caritas stipulated to a judgment that CDV does not infringe the Caritas patent.

On appeal, Caritas spends most of its time criticizing the district court's claim construction ruling, but little time defending its own proposed construction. Caritas has abandoned its argument to the district court that a telephonic connection is not a circuit switched connection. Instead, Caritas argues only that a telephonic connection does not exist between telephone devices, and instead is "a connection associated with a specific conferee." Caritas's proposed construction of "telephonic connection" solves none of the problems it finds in the district

court's construction, and creates many more. While Caritas concedes that its proposed definition of "telephonic connection" conflicts with the ordinary meaning of that term, and contends that it adopted some special definition of "telephonic connection," it points to no support in the specification for that proposition. Indeed, although the specification never uses the term "telephonic connection," it uses the almost identical term "telephone connection" in a manner consistent with the district court's claim construction. In addition, Caritas's critique of the district court's claim construction ruling would limit a "telephone device" to a typical telephone handset. But Caritas ignores other telephone devices that can serve as the endpoint of a telephonic connection, such as conference bridges, fax machines, and dial-up modems. Indeed, the district court made explicit in its construction that a telephonic connection can exist between any such telephonic devices, and not merely between telephone handsets.

Both the intrinsic and extrinsic evidence support the district court's construction of "telephonic connection" in accordance with its ordinary meaning. The claims and specification use the term "telephonic connection" as one of skill in the art of telecommunications would understand it, not in some idiosyncratic way. Similarly, the prosecution history of the Caritas patent shows that Caritas used the term "telephonic connection" in a manner different from what it now proposes, and also disclaimed coverage of services such as CDV that use an IP network to

transmit voice signals. Finally, the district court's construction encompasses the relevant disclosed embodiments.

For all of these reasons, this Court should affirm the district court's claim construction order and the stipulated judgment of non-infringement.

STATEMENT OF THE ISSUE

Did the district court correctly construe the phrase "telephonic connection" in accordance with its ordinary meaning to mean a "path between telephone devices"?

STATEMENT OF THE CASE

Caritas appeals from the Final Judgment of Non-Infringement dated November 9, 2006 (A0001), the related orders regarding the parties' Joint Motion for Entry of Judgment Pursuant to Rule 54(b), for Certification of Appeal, and to Stay Further Proceedings Pending Appeal, also dated November 9, 2006, (A0002-04), and the October 18, 2006 Claim Construction Order (A0005-36).

Caritas filed suit against Comcast on July 27, 2005, in the U.S. District Court for the Eastern District of Texas, alleging that the CDV service infringes the Caritas patent. (A0046.) The Caritas patent relates to using the Internet as a control network to control telephonic connections in a telephone network. (A0077-90.) The accused CDV service is a residential telephone service that carries calls at least in part over a private IP network. (A1889.) Comcast

counterclaimed for declaratory judgment of non-infringement, invalidity, and unenforceability.

Based on the district court's construction of the disputed claim terms "telephonic connection," (A0029), and "connection status information," (A0033) Caritas stipulated to a judgment of non-infringement. (A0001-03; A1889.) Specifically, Caritas conceded that the accused CDV service did not meet these claim limitations because "there is no circuit-switched path between telephone devices on a circuit-switched network." (A0002-03; A1889.) The district court therefore entered a judgment of non-infringement against Caritas, entered final judgment on Caritas's infringement claim under Rule 54(b), and stayed Comcast's counterclaims pending appeal. (A0002-03.)

STATEMENT OF THE FACTS¹

I. Background of the Invention

Internet Protocol (IP) has been around since the 1970's. By 1996, commercial application such as VocalTec were using IP to carry voice signals over the Internet. (A0083, col. 1, ll. 37-60.) Such Voice over IP (VoIP) calls required

¹ Pursuant to Federal Circuit Rule 28, Comcast provides this Statement of Facts because it disagrees with Caritas's "factual" statements. For example, Caritas states that "the intrinsic evidence supports Caritas's proposed construction, and refutes the district court's construction. Such non-factual, argumentative statements belong in Caritas's Argument section, not the Statement of Facts.

specialized hardware and software. (*Id.*) One of the Caritas inventors explained that, in the mid-1990s, the quality of voice-over-IP (VoIP) was “pretty crummy” and inferior to “the PSTN for talking.” (A1479, 139:9-18.)

As a result, the Caritas inventors wanted to create a system that used the Internet to control telephonic connections in the conventional telephone network. The inventors named that idea “EZSpeak.” (A1476, 95:21-23.) An August 12, 1996 e-mail message describes EZSpeak:

EZSpeak is a product that allows managed conference calling using the Internet as an interface to a switch on the Public Switched Telephone Network (PSTN) The command for connection is forwarded over the Internet to a switch. The switch places the calls and conferences the individuals together

(A1117-18.) A 1998 Caritas document provides more clarity: “EZSpeak optimizes the two network worlds . . . Internet is best for data and control . . . telephone network is best for voice.” (A1059.) The inventors spent several years trying to implement EZSpeak, but never succeeded in developing a working embodiment of their idea. (A1474-75, 87:21-88:1.)

II. The Caritas Patent

A. The Prosecution History

The Caritas patent issued on December 9, 2003, and is the fourth in a chain of patents that includes U.S. Patent Nos. 6,072,780, 6,266,328, and 6,480,474.

(A0685-93.) These patents claim priority dating back to a provisional application filed on August 26, 1996. (A1120-31.)

1. The original provisional application described setting up multi-party conferences over a circuit-switched network

The provisional application described a system in which a telephone conference can be initiated using a personal computer. (*Id.*, see also A1409.) The person who wants to set up a conference (the “Conference Meister”) inputs the telephone numbers of all the conference participants into his personal computer. (A1124.) The Conference Meister’s personal computer then sends a message over the Internet to another computer, which is described as a “switch interface.” (*Id.*) That switch interface sends a message to what the patent calls a “switch.” (*Id.*) The switch then rings the telephones of each of the participants (including the telephone of the Conference Meister). (*Id.*) When the participants pick up their telephones, they can talk to each other.²

² The provisional application explained that the conference will be established with “the telephone network being the *normal* means of exchanging audio information but allowing the use of either or both a telephone network and a data communications network in certain cases.” (A1122.) However, the remainder of the application only addressed circuit-switched telephone connections, and the subsequent applications eliminated the language about using a data network to carry voice signals.

Figure 1 illustrates this embodiment. The description of Figure 1 nowhere suggests connecting a telephone to the Internet rather than to the telephone network. To the contrary, it explains that “the telephones are tied into the telephone network in a conventional manner.” (A0083, col. 2, ll. 17-19.)

Table I in the provisional application listed various Command and Response codes for adding, removing, and checking the status of conferee connections. (A1125-26.) For example, Table I listed a Disconnect (DC) Command code, which instructs the system “to disconnect a conference members [sic] connection.” (A0084, col. 3, ll. 36-40.)

2. In 1998, Caritas added a “two-party call-back” feature to the specification

Following the provisional patent application, Caritas filed an application on August 22, 1997, which was subsequently abandoned. The next application in the chain was filed December 16, 1998, and resulted in the issuance of U.S. Patent No. 6,072,780 (“the ’780 patent”). (A0534-41.) The application that matured into the ’780 Patent added two figures, Figure 2 and Figure 3, as well as text accompanying those figures. (A1133-35.) The text accompanying Figures 2 and 3 describes a system with “call-back capability.” (*Id.*) The description of Figure 2 explains that “call-back can be between just two parties.” (*Id.*; *see also* A1409.) It describes a system in which a personal computer sends commands via a computer network to the telephone network to connect two parties (including the party initiating the

conference). (A1133-35.) The connections are treated as separate calls that originate from the “switch 34,” which is assigned a telephone number in order to be able to place the two calls. (A1135.)

3. In 2000, Caritas added a new disclosure of VoIP to the specification

On June 2, 2000, Caritas filed another application that ultimately issued as U.S. Patent No. 6,266,328 (“the ’328 patent”). (A0543-50.) The application that matured into the ’328 patent added Figure 4 and the text accompanying Figure 4, which describe a system in which parts of the voice traffic are routed over an IP network. (A1144-48.) The ’328 patent explicitly claims routing voice traffic over the Internet. (A1146-47.)

In prosecuting the ’328 patent application, the Examiner issued an obviousness-type double-patenting rejection over claim 1 of the ’780 patent in light of another third party reference. In traversing that rejection, Caritas cancelled certain claims and amended others. (A1150-54.) In so doing, Caritas told the Examiner that its basis for claiming VoIP was the following new matter added to the specification in 2000: “Hence, via the interface/switch control path 33’, 34’ the telephone central office advises the Internet computer 118 . . . that an audio signal is to be passed to the Internet . . . where it is digitized, if necessary, and packetized

for transmission on the Internet.” (A1153.) Caritas did not rely on the original 1996 disclosure in support of its new VoIP claims.³

4. In 2002, Caritas filed the application that ultimately issued as the Caritas patent

On March 1, 2002, Caritas filed the continuation application that matured into the Caritas patent . (A1157-93.) The Abstract explains: “In a telephone conferencing system, a digital communication network such as the Internet is used to establish and control *the telephone connections between multiple conferees with the telephone network being the means of exchanging verbal information.* (A0077 (emphasis added).)

³ Figure 4, which was also added in the '328 patent application in 2000, is described as illustrating Figure 1 in greater detail. (A0083; A1144.) But Figure 1 and Figure 4 illustrate different (and fundamentally incompatible) systems. Figure 1 shows, and the text accompanying Figure 1 states, that the telephones at the conferee stations are all connected directly to the telephone network. (A0079; A0083.) While conferences may be initiated using a PC, the voice traffic all passes over the telephone network. (*Id.*) Figure 4 apparently illustrates a different system in which telephone 28 is *not* connected to the telephone network, but is instead connected to a personal computer, which is in turn connected to the Internet. (A0082.) The description accompanying Figure 4 states that after the audio message is transmitted through the Internet, it arrives at “PC 28” (this appears to be a typo for PC 26) of Figure 1 “where software decodes the audio message 124, rings the telephone 28, and provides an analog audio signal for telephone 28.” (A0084, col. 4, ll. 35-39.) But PC 26 cannot ring telephone 28 in Figure 1, because they are not connected. (A0079.) For all these reasons, as well as because the elements in Figure 1 and Figure 4 do not match up, Figure 4 cannot be read as merely providing the information in Figure 1 in greater detail.

The Examiner initially rejected the claims for obviousness-type double-patenting with respect to both the '328 and '780 patents. (A1196-1201.) Caritas therefore filed a terminal disclaimer. (A1203.)

a. The Examiner rejected the original claims in view of the White patent

Following the terminal disclaimer, the Examiner rejected the 22 pending claims in view of U.S. Patent No. 6,609,890 ("the White patent"). (*Id.*) The White patent discloses a system for making "station-to-station telephone calls" that uses the Internet for transmitting voice signals between central office switches via "gateway routers," with connections to be initiated using conventional dial-up procedures and a standard telephone. (A0981-1000; A1218-19.) In the White patent, a party picks up a telephone that is connected to a central office switch in the telephone network and dials a special prefix. (A0995, col. 9, ll. 11-12.) This special prefix tells the switch to route the voice signals over the Internet so that the voice signals ultimately reach the switch closest to the dialed party's telephone. (*Id.*, col. 9, ll. 12-18.) That distant switch then rings the recipient's telephone using the conventional telephone network. (*Id.*, col. 9, ll. 48-64.) So, in the White patent, the voice signals travel in part over the telephone network (from each telephone to the router nearest to that telephone) and in part over the Internet (between the routers).

b. Caritas distinguished its claims over the White patent

In response to the Examiner's rejection, Caritas cancelled the 22 pending claims and submitted 45 new claims. (A1210-20.) The new claims removed the term "telephonic communication interconnection" and instead used the term "telephonic connections." (A1211-17.) In its Remarks to the Examiner regarding these new claims, Caritas contrasted the limitations in the new claims with the White patent. Caritas pointed out that the White patent discloses a way for "a caller to set up and carry out a telephone call over the Internet from telephone station to telephone station" and that "White uses the Internet to carry digitized voice traffic." (A1218-19.) In effect, Caritas told the Examiner that White was a hybrid VoIP and circuit-switched telephone system. Caritas distinguished its claimed invention from White by explaining that: "In no case does White use or suggest a digital computer attached to the Internet to initiate or otherwise control a telephone connection in a telephone network." (A1218.)

B. The Asserted Independent Claims

The following chart recites the independent claims that Caritas has asserted against Comcast, and highlights the claim terms at issue here on appeal:

Claim	Claim Language
1	A system for controlling communication among a plurality of conferees, the system comprising:

	<p>a digital computer for controlling and monitoring telephonic connections over an Internet Protocol (IP) communication network; and</p> <p>a switch interface in communication with the digital computer over said IP communication network and further in communication with a dial up communication network, wherein:</p> <p>the digital computer transmits digital control signals to the switch interface over the IP communication network;</p> <p>the switch interface transmits telephonic control signals to the dial up communication network in response to said digital control signals to establish at least one telephonic connection for a conference among the plurality of conferees; and</p> <p>the digital computer subsequently monitors the at least one telephonic connection over the IP communication network. (A0085.)</p>
17	<p>A method for controlling communication among a plurality of conferees, the method comprising:</p> <p>transmitting digital control signals from a digital computer over an Internet Protocol (IP) communication network to a switch interface that transmits telephonic control signals to a dial up communication network in response to the digital control signals to establish at least one telephonic connection for a conference among the plurality of conferees; and</p> <p>monitoring the at least one telephonic connection by the digital computer over the IP communication network. (A0086.)</p>
33	<p>A method for controlling communication among a plurality of conferees, the method comprising:</p> <p>receiving digital control signals over an Internet Protocol (IP) communication network;</p> <p>transmitting telephonic control signals to a dial up communication network in response to the digital control signals to establish a telephonic connection to at least one conferee telephone devices for a conference among the plurality of conferees;</p>

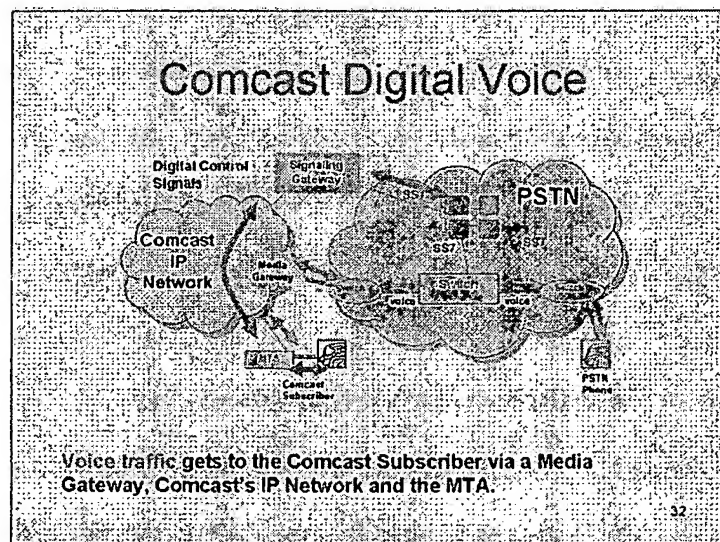
	obtaining connection status information from the dial up communication network; and transmitting the connection status information over the IP communication network. (A0086.)
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Caritas claims a 1996 priority date for these claims. (A1306.) The specification contains three embodiments: (1) the original conferencing embodiment of Table I; (2) the call-back embodiments added in 1998; and (3) the VoIP disclosure added in 2000. (A0083-85.) As of 1996, Caritas had only disclosed the embodiment of Table I; the call-back embodiments and the VoIP disclosure were added at later dates. The term “telephonic connection” does not appear outside of the claims. (A0077-90.)

III. The Accused Infringing CDV Service

CDV is Comcast’s residential telephone service. CDV is provided over Comcast’s hybrid fiber coaxial cable network and is intended to replace traditional telephone service. CDV carries voice signals at least in part over Comcast’s private IP network. (A1889.) For voice signals to or from a CDV subscriber to regular telephone subscribers (*i.e.*, where voice signals travel, in part, over the PSTN), a CDV subscriber uses a phone that plugs into a Multimedia Terminal Adapter (MTA). The voice signals travel from the MTA to a Media Gateway (MG), which is connected to a switch in the PSTN. Voice signals between the MTA and the MG are carried in packets over an IP network; they are not

transmitted over a circuit-switched path. Thus, as the stipulated description of CDV points out, “there is no circuit-switched path between telephone devices on a circuit-switched network.” However, voice signals are carried between the MG and the PSTN switch over a circuit-switched path on a circuit-switched telephone network. Similarly, voice signals within the PSTN are carried over a circuit-switched path. (*Id.*) Caritas’s own illustration of CDV shows that CDV does not rely exclusively on circuit-switched connections for voice communication:



(Caritas Br. 12; A1647.) Instead, as in the White patent, CDV uses an IP network to carry at least some of the voice signals.

Caritas has alleged that CDV follows the PacketCable 1.0 specification released on December 1, 1999, by CableLabs, a nonprofit research and development consortium of cable television companies. The PacketCable 1.0 specification discloses a system for operating residential telephone service over a

packet cable network that would be inter-operable with traditional telephone service. CableLabs released PacketCable 1.0 approximately six months before Caritas added the VoIP disclosure to the continuation in part application that matured into the '328 patent.

IV. District Court Proceedings

A. Claim Construction

The district court construed six different claim terms. Caritas limits its appeal to two of those terms: “telephonic connection” and “connection status information.”

As the district court noted, the dispute over how to construe “telephonic connection” centered around three issues: “(1) whether the connection must be over the PSTN, (2) whether the connection must be a “switched circuit” connection, and (3) whether a telephonic connection is associated with a specific conferee (conferee-to-conference) or is between two telephones (conferee-to-conferee).” (A0024; A0514.)

The first two issues are not at issue in this appeal, but we provide a brief background about them for context. Caritas had sought to construe a dial up communication network as not limited to a circuit switched network, and instead as including VoIP services provided by regulated telephone companies (*e.g.*, regional bell services). The district court disagreed, and concluded that a “dial up

communications network” had to be circuit switched. (A0023.) The district court also concluded that a dial up communication network is not limited to a public network, as Caritas had contended. (*Id.*) Caritas does not dispute those decisions here. Thus, all parties agree for purposes of this appeal that a telephonic connection is a connection in a circuit switched network.

The dispute here relates to the third issue—whether a telephonic connection is between telephone devices. The district court construed the term “telephonic connection” to mean “a circuit-switched path between telephone devices on a circuit-switched network.” Notably, under the district court’s construction, the connection is between “telephone devices,” not simply between “telephones.” This clarification was born out of Comcast’s explanation that by the term “telephone” in its proposed construction, Comcast had meant to include any “telephone device,” including a fax machine, modem, or conference bridge. (A1378.)

The district court construed “connection status information” in keeping with its construction of “telephonic connection” to mean information about the status of the connection “between telephones.”

The parties also disputed the meaning of the claim term “conference among the plurality of conferees.” (A0017.) Comcast proposed that this the term be construed as a call with three or more conferees, while Caritas proposed that it be

construed as a call with two or more conferees. (*Id.*) The district court adopted Caritas's proposal, and thus included an ordinary two-person telephone call within the definition of a conference. (A0020.)

B. Caritas Stipulates That CDV Does Not Infringe

Based on the district court's claim construction ruling, Caritas stipulated to a judgment of non-infringement. Caritas conceded that CDV does not infringe under the district court's claim construction because Caritas's claims only covered circuit-switched telephone calls, not VoIP. More specifically, the stipulation stated that, for conferences with a CDV subscriber where the voice signals travel in part over the PSTN, "there is no circuit-switched path between telephone devices on a circuit-switched network." (A1889.) Instead, CDV carries voice signals at least in part over an IP network, which is a packet-switched network. (*Id.*) The stipulation therefore recited that the accused CDV service could not meet the "telephonic connection" limitation of the asserted independent claims. (A0003.) For the same reason, the stipulation recited that the accused CDV service could not meet the "connection status information" limitation as construed. (*Id.*) The parties *did not* stipulate, contrary to the assertion in Caritas's brief, that CDV "establishes a circuit-switched path to at least one telephone on a circuit-switched network." (Caritas Br. 12.)

To ensure that this Court had a sufficient factual record to support the stipulated judgment of non-infringement, the district court set a hearing to address whether with the stipulation complied with *Lava Trading, Inc. v. Sonic Trading Management, LLC*, 445 F.3d 1348 (Fed. Cir. 2006). (A1895.) The parties submitted a joint response explaining why the stipulation sufficiently described the operation of the accused CDV service to support a judgment of non-infringement under the district court's claim construction ruling. (A1896-1900.) Satisfied that the stipulation meets the standard of *Lava Trading*, the district court canceled the hearing and signed the parties' joint stipulated judgment of non-infringement. (A1889, A0001).

V. The Relevant Technology

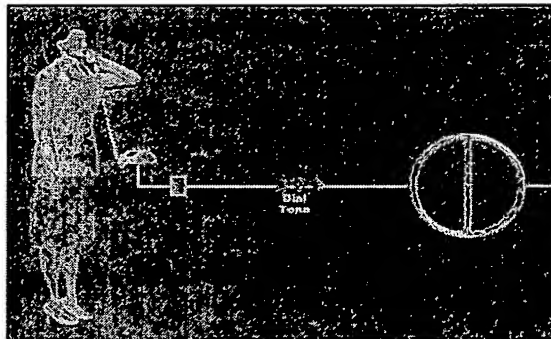
A. Calls in the Public Switched Telephone Network (PSTN)

Caritas now agrees that a telephonic connection is a circuit-switched connection in a telephone network. (Caritas Br. 8.) We explain in this section how both local and long-distance calls are set up and taken down on a circuit-switched network such as the PSTN. This technology background provides context for evaluating how a person of ordinary skill in the art would interpret the meaning of telephonic connection.

1. A central switch connects two telephones for a local call

A telephone is physically tied to a central office switch by copper wires. (A1403.) That central office switch is also connected to other telephones in the same geographic area. (*Id.*)

When a caller picks up telephone A to dial telephone B, the switch detects that telephone A has gone off hook. (*Id.*) In response, the switch sends a dial tone to telephone A. (*Id.*)⁴



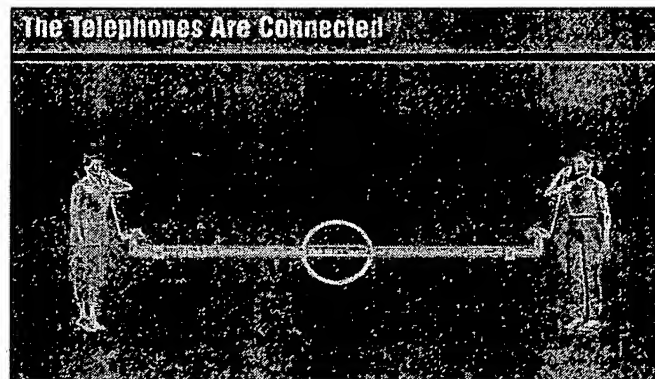
The caller presses the buttons on telephone A, and this action sends corresponding audible touch tones to the central office switch, which will take action in response. (*Id.*) If telephone B is “off hook” (*e.g.*, not in the cradle), the switch will return a busy signal. (*Id.*) If telephone B is “on hook” (*e.g.*, hung up in the cradle), the switch will cause local telephone B to ring. (*Id.*)

⁴ The following figures can be found in the multimedia Tutorial entitled “How a Local Call Gets Placed in POTS,” contained on CD Ex. A1902.

If the dialed party picks up telephone B, the switch detects this event. (*Id.*)



The switch then creates a continuous path—a circuit—between telephones A and B that can be used for voice communication. (A1404.)



This path between the telephones is a “circuit-switched” or “switched circuit” path. (*Id.*)

When either telephone hangs up, the switch detects this event and breaks the connection between telephone A and telephone B. (*Id.*) Thus, telephone A and telephone B remain connected to each other only for the duration of the call. (*Id.*) Moreover, the switch cannot and does not maintain a connection to either telephone A or telephone B once either party hangs up. The circuit is indivisible:

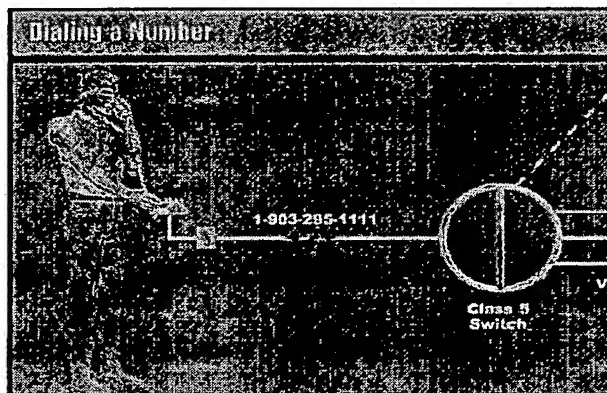
there is either a connection all the way through the switch from one phone to the other or no connection at all. As Caritas's expert Dr. Forys explained, a switch cannot establish a connection without there being a telephone device on each end, and the connection ceases to exist when the telephone device on either end drops off. (A1534.)

2. Multiple switches create a circuit for a long-distance call

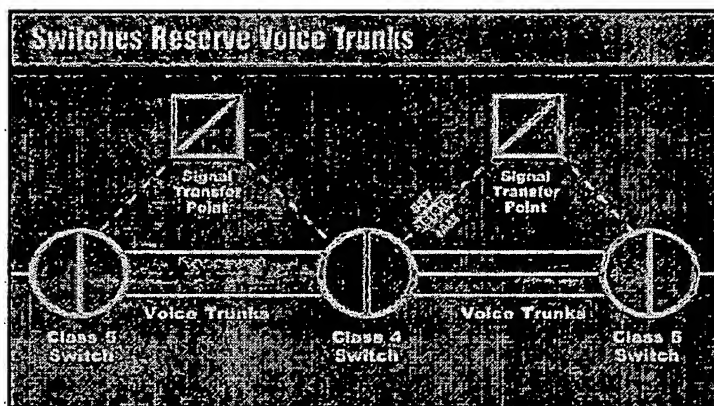
A long-distance call starts the same way as a local call. (A1406.) But because the dialed party's telephone is not tied into the same switch as the dialing party's, the central office switch cannot ring the called party's telephone directly. (*Id.*) Instead, the central office switch reserves a long-distance "voice trunk" to another switch. (*Id.*) Voice trunks run between the central office switch and an intermediate switch (called a Class 4 switch). (*Id.*) The Class 4 switch then reserves another voice trunk to the dialed party's central office switch. (*Id.*) If the dialed party answers, the telephones are connected by a single circuit that runs from telephone A to telephone B, across the voice trunks and the copper wires. (*Id.*) As in a local call, the path is fixed for the duration of the call and is broken down entirely when either telephone is hung up. (*Id.*)

The following figures demonstrate set up and break down of a long-distance call using SS7 signaling. The caller presses buttons on telephone A—in this case,

a long-distance number—which sends corresponding audible touch tones to the central office switch to which telephone A connects. (*Id.*)⁵



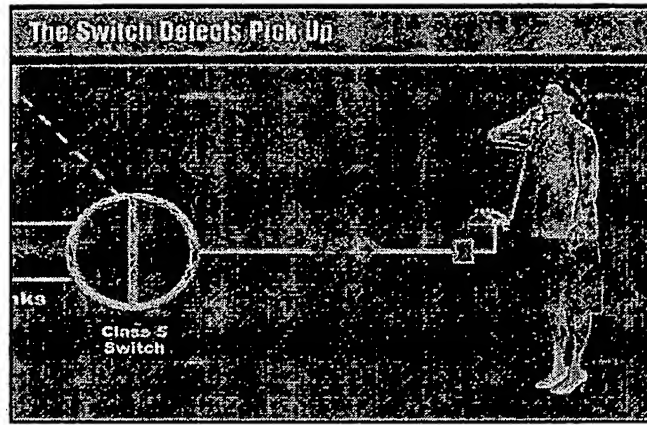
The switch reserves a voice trunk between the central office Class 5 switch for telephone A and an intermediate Class 4 switch. (A1405-06.)



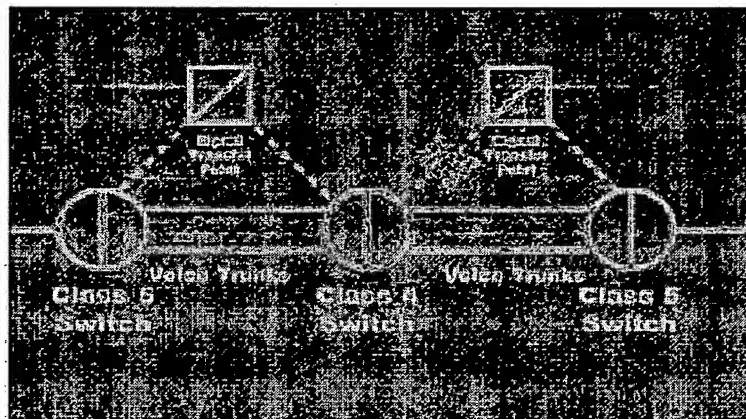
The intermediate Class 4 switch also reserves a voice trunk between it and the Class 5 central office switch for telephone B using SS7 signaling. (A1406.) If telephone B is “on hook” (e.g., hung up in the cradle), the distant Class 5 central

⁵ The following figures can be found in the multimedia Tutorial entitled “How a Long Distance Call Gets Placed in POTS,” contained on CD Ex. A1902.

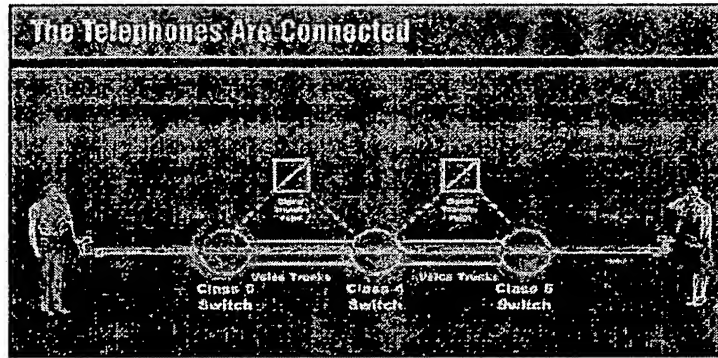
switch causes telephone B to ring. (*Id.*) If the dialed party picks up telephone B, the switch detects this event. (*Id.*)



In response, the distant central office Class 5 switch sends an SS7 signal to the Class 5 central office switch connected to telephone A via the intermediate Class 4 switch, which signal tells the switches that telephone B has been picked up. (A1406-07.)

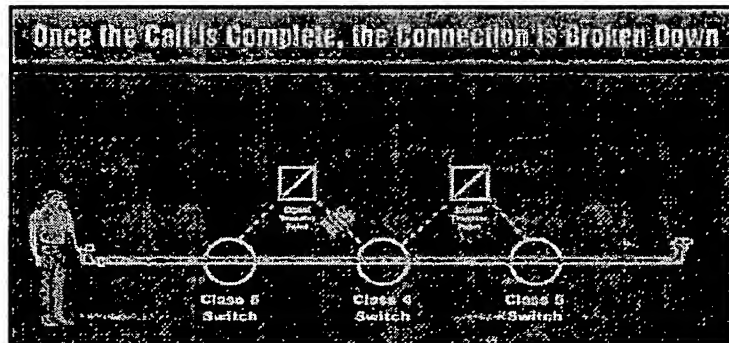


The telephones are then connected through the voice trunks, creating a “circuit-switched” or “switched circuit” path between telephone A and telephone B that continues for the duration of the call. (A1405.)

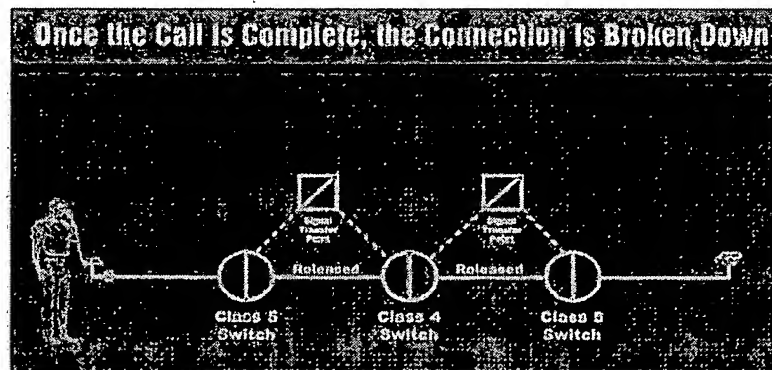


At the end of the call, the connection is broken down using SS7 signaling.

(A1407.) For example, if telephone B hangs up, the distant Class 5 switch generates an SS7 signal (the REL, or "release," signal), which travels to the Class 5 switch connected to telephone A via the intermediate Class 4 switch. (*Id.*)



The voice trunks that had been reserved are released, and the telephonic connection is broken down. (*Id.*)



B. Connecting More Than Two Parties

There are two common ways to establish a multi-party call. (A1407.) First, one can use the three-way conferencing feature available from most local telephone companies, in which a switch establishes the three-way conference. (*Id.*) Second, one can use a conference bridge. (*Id.*) This technical background provides context for why the district court's construction is consistent with the embodiments disclosed in the specification.

1. A switch can establish a three-way conference

To establish a three-way conference using a switch, either end of a conference can press the flash button on the phone or press and quickly release the phone's disconnect hook. (*Id.*) For example, assume that caller A is connected to caller B, and that caller A desires to establish a three-way conference with caller C. To do so, caller A presses the flash button. (*Id.*) The local switch detects this action and sends a dial tone to telephone A. (*Id.*) The connection between telephone A and telephone B remains in place, but at this point caller A and caller B cannot talk to each other. (*Id.*) Caller A then dials the number for telephone C. (*Id.*) The switch sets up a second connection between telephone A and telephone C, using the procedures detailed above. (*Id.*) The switch then combines the audio signals from the two connections and all three callers can talk to each other. (*Id.*)

In this example, if caller C hangs up, the connection between telephone A and telephone B remains. (*Id.*) If caller B hangs up, the connection between telephone A and telephone C remains. (*Id.*) The entire circuit breaks down, however, if both telephone B and telephone C hang up. (*Id.*)

2. A conference bridge can be used to establish multi-party conferences

The second way to connect multiple telephones together is using a conference bridge. (A1407-08.) Unlike a switch, a conference bridge acts as a specialized type of phone. (A1408; *see also* A1053 (a conference bridge is “a specialized type of telephone that answers multiple calls”).) A conference bridge can serve as an endpoint of a telephonic connection in the telephone network. (A1408.)

An automated bridge typically works by a caller dialing the number for the bridge and entering a PIN after being prompted to do so. (A1408.) Caritas described such a “dial-in” conference bridge to the European Patent Office in distinguishing over prior art when prosecuting a counterpart international application:

Here [in the bridge], the SS7 system is not used just to directly dial-up conferees’ telephones; “Specifically, [SS7] out-of-band signaling is utilized to dynamically route incoming conference calls to bridges with available resources. . . The conference is initiated when the subscriber dials in to the system, enters the subscriber passcode, and enters the conference PIN. At that point,

the person initiating the conference has connected to the bridge via an SS7 compatible switch. Other conferees dial in using the subscriber's telephone number, enter the subscriber PIN, and are connected to conference."

(A1048-49.) A conference bridge may also be a dial-out bridge, in which the bridge itself initiates the call. Caritas described an operator-assisted dial-out bridge as prior art in the patent specification.

Unlike a switch, a conference bridge may hold a connection to just one telephone. (*Id.*) Even if "one party hangs up, you are still allowed to have the bridge connected. Even though connectivity between two people is lost. . . . A bridge you allow yourself to identify each of those legs independently." (A1535, 164:8-24.) In that circumstance, the bridge itself is a party to the conference. For example, in the case of a dial-in bridge, a conferee dials the telephone number of the conference bridge, not the number of another participant in the conference, and can connect to the bridge even if none of the other parties has joined the conference. (A1408.) Caritas's expert Dr. Forys testified that bridges are not the same thing as switches; he explained that a conference bridge can be located at the same physical facility as a switch, but it is a separate "special component." (A1534, 163:20-164:2.)

SUMMARY OF THE ARGUMENT

The district court properly construed “telephonic connection” to mean “a circuit-switched path between telephone devices on a circuit-switched network.” That is the plain meaning of the term to one of skill in the art of telecommunications. Indeed, this Court previously decided in *Microsoft Corp. v. Multi-Tech Systems, Inc.* that a circuit-switched connection is an end-to-end connection between telephones on the telephone network. 357 F.3d 1340, 1344 n.2 (Fed. Cir. 2004). In reaching that conclusion, the Court relied on NEWTON’S TELECOM DICTIONARY, which defines a telephone “connection” as the “path between telephones.”

The specification uses the term in precisely this way. The sole reference to a “telephone connection” describes a connection “between multiple conferees with the telephone network being the means of exchanging verbal information.”

This meaning also comports with the prosecution history. In prosecuting related patents, Caritas used the term “telephonic connection” to refer to the connection between telephones, and noted that the original 1996 provisional application did not disclose connections in an IP network.

Caritas now advocates for a special meaning of the term “telephonic connection.” But Caritas cannot point to any intrinsic evidence to support such a special definition. As noted above, the patent specification does not even use the

term. And, to the limited extent it uses similar terminology—“telephone connection”—the specification actually supports the district court’s construction.

Moreover, it is not even clear what Caritas intends its special definition of “telephonic connection” to mean. In fact, Caritas applies several inconsistent interpretations to its proposed claim construction, arguing in different places that it encompasses: (1) a conference-to-conferee connection, (2) a switch-to-telephone connection, or (3) a conference-to-switch connection. None of these interpretations makes sense in the context of the patent or the relevant technology. Indeed, none of Caritas’s various proposed meanings makes sense in the context of the simplest case—a local two-party telephone call.

Further, the prosecution history demonstrates that Caritas’s proposed construction cannot be correct. In its arguments to the Examiner, Caritas said that the White patent did not disclose telephonic connections; however, that statement cannot be correct if that term means a switch-to-telephone connection because the White patent explicitly discloses a switch-to-telephone connection in a circuit-switched network. In any event, during prosecution Caritas disclaimed coverage of telephone calls over the Internet, so its claims cannot cover the accused infringing CDV service.

Caritas’s various critiques of the district court’s claim construction have little merit. First, by construing a “telephonic connection” to mean the connection

between telephone devices, the district court did not import any limitations into the claim. The plain meaning of “connection” is a link between two end points. Second, an analysis of the dependent claims shows that Caritas’s proposed construction renders certain terms redundant, whereas the district court’s does not. Third, contrary to Caritas’s assertions, the district court’s claim construction encompasses the disclosed embodiments, including the original conferencing embodiment and the call-back embodiment. Dr. Forys testified that these embodiments can be—and, in some circumstances, must be—implemented by a conference bridge. As such, they have telephonic connections between telephone devices—the bridge, on the one end, and the conferee telephones, on the other. Finally, the district court’s construction is consistent with the nature of circuit-switched connections because, as a technical matter, multiple circuit-switched paths can be present on a single physical telephone line.

For all these reasons, the Court should affirm the district court’s construction of “telephonic connection,” as well as the dependent claim term “connection status information,” and affirm the judgment of non-infringement.

ARGUMENT

I. “Telephonic Connection”

A. The Intrinsic and Extrinsic Evidence Supports the District Court’s Construction of “Telephonic Connection”

1. The district court properly construed “telephonic connection” according to its ordinary meaning

The words of a claim are generally given their ordinary and customary meaning, which is the meaning that the term would have to a person of ordinary skill in the art at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005). Moreover, “[a] trial court, when construing a term of art, must define the term in a manner consistent with the scientific and technical context in which it is used in the patent.” *See AFG Indus., Inc. v. Cardinal IG Co.*, 239 F.3d 1239, 1247-48 (Fed. Cir. 2001).

The ordinary meaning of “telephonic connection” is “a circuit-switched path between telephone devices.” This Court has previously held that, in the context of the PSTN—a *telephone* network—a circuit-switched *connection* is established between users. *See Multi-Tech.*, 357 F.3d at 1344 n.2.⁶ In *Multi-Tech*, the Court explained that “a circuit-switched network . . . is one in which a *connection* is

⁶ As discussed in detail below, *Multi-Tech* is particularly informative because it addressed the same fundamental distinction at issue here: whether the claims covered only circuit-switched connections or also encompassed packet-switched connections. *See* 357 F.3d at 1346.

established from one user to the other such that the users have exclusive and full use of the circuit until the connection is released.” *Id.* *Multi-Tech* thus decided that, in the context of a circuit-switched telephone network, a connection is end to end between telephones.

In reaching that conclusion, this Court relied in part on NEWTON’S TELECOM DICTIONARY. Even Caritas admits that Newton’s provides the general meanings of terms in telecommunications: “Newton was defining ‘connection’ in relation to regular telephone calls.” (Caritas Br. 50-51.) Newton’s defines a telephone connection as: “A path *between telephones* that allows the transmission of speech and other signals.” NEWTON’S TELECOM DICTIONARY 260 (7th ed. 1994) (emphasis added) (A1274).

Expert testimony confirmed this ordinary meaning of a telephonic connection.⁷ Dr. Campbell, Comcast’s expert, testified that those of ordinary skill in the art of telecommunications understand the term “telephonic connection” to mean “a circuit-switched connection *between* two end points that are telephones or

⁷ [E]xpert testimony can be useful to a court for a variety of purposes, such as to provide background on the technology at issue, to explain how an invention works, to ensure that the court’s understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field.

Phillips, 415 F.3d at 1318.

telephone-like devices.” (A1864.). Further, Dr. Campbell explained that, in a local call, the telephonic connection runs between two phones for the duration of a call; at no point is the connection “associated” with a particular conferee. (A1864-65.) Thus, according to Dr. Campbell, a definition that associated a telephonic connection with a specific conferee, as Caritas’s proposal does, would exclude the vast majority of two-party calls. (A1865.) Caritas chose not to cross-examine Dr. Campbell or to present any rebuttal testimony from its own expert. (A1868.)

Finally, the district court’s plain-meaning construction of “telephonic connection” is consistent with the technical context in which that term is used in the patent. As discussed above, telephones connect through switches. The connection itself is over a circuit-switched network, typically the PSTN. In any circuit-switched network, there is a continuous circuit-switched path between the two ends over which signals travel for the duration of the call. And each end must have a telephone device, *e.g.*, a telephone handset, fax machine, modem, or conference bridge. Thus, given that a “telephonic connection” is over a circuit-switched network and that it necessarily requires telephone devices at both ends, the district court correctly concluded that the ordinary meaning of “telephonic connection” is “a circuit-switched path between telephone devices.”

2. The specification supports the district court's plain-meaning construction

The claim language should be read in view of the specification—the single best guide to the meaning of a disputed term. *Phillips*, 415 F.3d at 1315. Claims must be construed so as to be consistent with the specification, including the Abstract. *Hill-Rom Co., Inc. v. Kinetic Concepts, Inc.*, 209 F.3d 1337, 1341 n.1 (Fed. Cir. 2000); *see also Pandrol USA, LP v. Airboss Ry. Prods., Inc.*, 320 F.3d 1354, 1363 (Fed. Cir. 2003) (relying, in part, on statements in the Abstract to construe claim term “adhering material”); *Tate Access Floors, Inc. v. Maxcess Techs., Inc.*, 222 F.3d 958, 965 n.2 (Fed. Cir. 2000) (“[T]he abstract of a patent is a potentially useful source of intrinsic evidence as to the meaning of a disputed claim term.”).

While the term “telephonic connection” appears nowhere outside the claims, the phrase “telephone connection” does. The Abstract uses “telephone connection” to mean a connection between telephones: “a digital communication network such as the Internet is used to establish and control the telephone connections *between multiple conferees with the telephone network being the means of exchanging verbal information.*” (A0077 (emphasis added).) Dr. Forys confirmed in his deposition that the term “telephone connection” as used in the Caritas patent is a connection between telephones. (A1533, 130:16-131:2; *see also* A1411.)

There is no difference between a “telephone connection” and a “telephonic connection.” Dictionaries have the same definitions for “telephonic” as for “telephone,” but “telephonic” typically appears as an adjective and “telephone” typically appears as a noun. AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2000) (A1262); WEBSTER’S II NEW RIVERSIDE UNIVERSITY DICTIONARY 1190 (1988); WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 1212 (1989 (A1266). Put another way, an “appellate court” is no different from an “appeals court.”

Caritas itself has used the terms “telephone” and “telephonic” interchangeably. Before the district court, Caritas relied on the use of the term “telephone connection status information” in the specification to support its proposed construction of “[telephonic] connection status information” in the claims. (A0521.) And before the PTO Caritas distinguished its pending claims, which used the term “telephonic connection,” with the White patent by arguing that the White patent did not disclose a “telephone connection.” (A1218.) Having equated the terms “telephonic” and “telephone” multiple times, Caritas all but admits that they mean the same thing.

The specification’s use of the term “connection” standing alone also supports the district court’s plain-meaning construction. Table I contains thirteen Command/Response codes for, among other things, establishing, disconnecting, or

checking the status of conferee connections. It lists an “Establish *Connection*” command code, which instructs the system “that a specified number be connected to a conference.” (A0084, col. 3, ll. 19-22 (emphasis added).) Table I also contains a “Disconnect” command code, which instructs the system “to disconnect a conference members [sic] *connection*,” (A0084, col. 3, ll. 36-40 (emphasis added).) Dr. Forys testified that the embodiment of Table I disclosed in the patent requires the use of a conference bridge. (A1535-36, 168:11-170:15.) It cannot be implemented using only a conventional switch. Dr. Campbell similarly testified that Table I describes a “connection from telephone to a machine, conference center”—in other words, a conference bridge. (A0591, p. 154.) With that understanding, each added or disconnected “connection” is indeed a “telephonic connection” as the district court has construed that term. The “connection” is a circuit-switched path between a conference bridge—a type of telephone device—and a conferee’s telephone handset—another type of telephone device. (A1535-36, 168:11-170:15.) In other words, the “connection” is the path “*between telephone devices*”—a conference bridge and a telephone handset.

Caritas incorrectly asserts that the use of the term “connection” in Table I does not comport with Newton’s definition of “connection.” (Caritas Br. 37-38.) In support of that proposition, Caritas quotes from Dr. Campbell’s deposition testimony, where he noted that the Newton definition of “connection” is different

from the use of that term as it relates to the embodiment of Table I. (*Id.* at 38.) In so doing, however, Caritas ignores the distinction made by Dr. Campbell. Specifically, Dr. Campbell testified that, while Newton’s “is describing a connection between *telephones*,” Table I “is describing a connection from telephone to a machine, conference center” (*i.e.*, a conference bridge). (A0591 (emphasis added).) Dr. Campbell’s testimony therefore supports the district court’s claim construction as requiring a connection “between telephone devices”—including both a bridge and a conferee telephone—rather than simply conferee “telephones,” as in Newton’s. The district court properly modified Newton’s definition of a “connection” on the basis of Table I’s more expansive use of that term by making clear that a connection could exist between any two telephone devices.

3. **The district court construed “telephonic connection” in a manner consistent with the prosecution history**
 - a. **Caritas used the ordinary meaning of telephonic connection in distinguishing over the White patent**

“[T]hrough statements made during prosecution or reexamination an applicant . . . may commit to a particular meaning for a patent term, which meaning is then binding in litigation.” *CVI/Beta Ventures, Inc. v. Tura LP*, 112 F.3d 1146, 1158 (Fed. Cir. 1997), *cert. denied*, 118 S. Ct. 1038 (1998).

To traverse the Examiner's rejection of Caritas's then-pending claims in light of the White patent, Caritas cancelled those claims and submitted new claims containing the term "telephonic connection. In so doing, Caritas explained: "In no case does White use or suggest a digital computer attached to the Internet to initiate or otherwise control *a telephone connection in a telephone network.*" (A1218 (emphasis added).) Caritas and its expert Dr. Forys have agreed, however, that the White Patent discloses a (1) digital computer attached to the Internet;⁸ and (2) that the digital computer attached to the Internet controls a telephonic connection between telephone devices.⁹ Thus, the only point of distinction between the pending Caritas patent application claims and the White patent was the requirement that the computer control a "telephone connection in a telephone network."

Caritas's statement can only be correct if the term "telephonic connection" means a connection between telephones in a circuit-switched network. By saying

⁸ (A1447, ll. 1-6 (Q: Would that gateway router 104 be a digital computer? A: Yes, generally are. Q: What about gateway router 116, could that exercise control functions also? A: Generally yes. . . ."). The White patent confirms that both gateway routers referred to in the above deposition testimony are attached to the Internet. (A0984.)

⁹ (A1448, ll. 6-9 ("There is one embodiment where it [digital computer attached to the Internet 116, note 10, *supra*] appears to control a voice link 119. If that's what you are referring to that is controlling 119; the telephonic connection there.")

that the White patent does not disclose a “telephone connection in a telephone network,” Caritas in effect told the Examiner that it was using the term “telephonic connection” in a manner that excludes carrying voice signals in part over the Internet. In other words, in distinguishing over the White patent, Caritas defined the term “telephonic connection” to mean an end-to-end circuit-switched connection between telephone devices, in contrast to a connection that uses a packet-switched network such as the Internet to carry part of a conference, as disclosed in the White patent.

b. The claims of the '780 patent support the district court's claim construction

The claims of the '780 patent refer to “establishing telephonic connections among a first plurality of telephone devices.” (A0540-41.) The claims therefore demonstrate that telephonic connections exist between telephone devices, as the district court ruled. Accordingly, because case law favors construing terms consistently throughout the claims, the specification, and the file history, and the district court's construction conforms with how the patentees used the term “telephonic connection” in the '780 patent, the district court's construction is presumably correct. *See NTP, Inc. v. RIM, Ltd.*, 418 F.3d 1282, 1293 (Fed. Cir. 2005); *Frank's Casing Crew & Rental Tools, Inc. v. Weatherford Int'l, Inc.*, 389 F.3d 1370, 1377 (Fed. Cir. 2004); *Dayco Prods., Inc. v. Total Containment, Inc.*, 258 F.3d 1317, 1326 (Fed. Cir. 2001).

B. Caritas's Proposed Construction of "Telephonic Connection" As Having Some Special Meaning Conflicts With the Evidence

1. "Telephonic connection" has no special meaning

Caritas claims that "telephonic connection" means "a [circuit-switched] connection over a [circuit-switched network] associated with a specific conferee." Problematically, this proposal is both recursive—repeating rather than defining the word "connection"—and awkward—construing "telephonic" to mean "associated with a specific conferee." Even more problematic, none of the claims, the specification, and the extrinsic evidence supports Caritas's proposed special construction.

"A technical term used in a patent document is interpreted as having the meaning that it would be given by persons experienced in the field of the invention, unless it is apparent from the patent and the prosecution history that the inventor used the term with a different meaning." *Hoechst Celanese Corp. v. BP Chems. Ltd.*, 78 F.3d 1575, 1578 (Fed. Cir.), *cert. denied*, 117 S. Ct. 275 (1996). The patentee therefore bears the burden of proving that it used a term in a non-conventional manner: "a patentee is free to be his own lexicographer, so long as the special definition of a term is made explicit in the patent specification or file history." *Mycogen Plant Science, Inc. v. Monsanto Co.*, 243 F.3d 1316, 1327 (Fed. Cir. 2001)). Similarly, "[w]here an inventor chooses to be his own lexicographer and to give terms uncommon meanings, he must set out his uncommon definition

in some manner within the patent disclosure so as to give one of ordinary skill in the art notice of the change.” *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

Rather than construe “telephonic connection” according to its plain and ordinary meaning, Caritas urges that the term has a special meaning within the context of the claims and the specification. (Caritas Br. 50-51.) As Dr. Forsy admitted on cross-examination at the Markman hearing: “Q: Now in your view you are attributing to this term [telephonic connection] as it’s used in the patent a special meaning, right? A: That’s correct.” (A1793.)

But while Caritas contends that the Caritas patent uses the term “telephonic connection” in a manner different than its ordinary meaning to those of skill in the art, Caritas cannot support that contention because the specification *never* uses the term “telephonic connection.”¹⁰ Thus, Caritas never made its unconventional definition explicit in the specification so as to give notice to one of ordinary skill in the art, as required by *Mycogen* and *Paulsen*. It therefore cannot meet its burden of showing that it acted as its own lexicographer and adopted a special definition of the term “telephonic connection.” *Hoechst Celanese*, 78 F.3d at 1578.

¹⁰ As discussed above, the specification only uses the analogous term “telephone connection” once, in a manner that supports the district court’s construction. Dr. Forsy conceded that the district court construed “telephonic connection” in accordance with the specification’s use of the term “telephone connection.” (A1533, 130:16-131:2; *see also* A1411.)

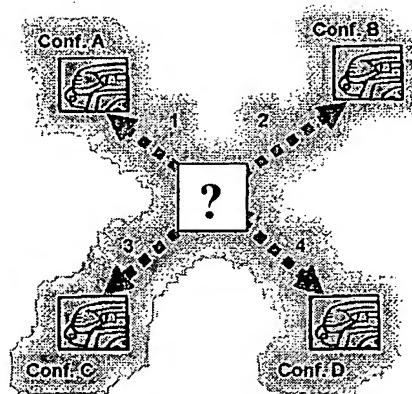
As discussed above, the use of the term “connection” in Table I also supports the district court’s plain-meaning construction, not Caritas’s proposed special meaning. Dr. Forys testified that the embodiment of Table I requires using a conference bridge. (A1535-36, 168:11-170:15.) Thus, any “connection” referred to in Table I is indeed between telephone devices—the conference bridge on one end and a conferee telephone handset on the other.

2. Caritas’s proposal fails to define the endpoints of a connection

a. A connection to a “conference” is meaningless

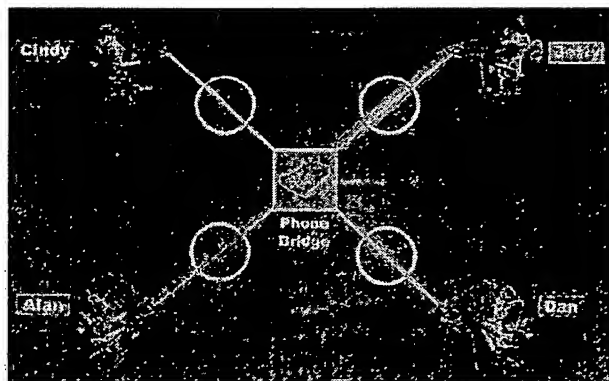
Interpreting “telephonic connection” as a conferee’s connection to “conference” makes no sense. (*See* Caritas Br. 17). Nothing connects to a “conference.” As construed by the district court, a “conference” is simply an exchange of information among two or more participants. Caritas’s claim construction provides for a connection without endpoints, even though a circuit-switched connection requires endpoints. Caritas inadvertently admits this void in its representation of telephonic connections: ¹¹

¹¹ The underlying drawing comes from Caritas’s brief. Comcast has added the question mark to illustrate the lack of clarity provided by Caritas’s illustration.



(A1721.)

Dr. Forys has explained that—at least in the Table I and call-back embodiments—the four callers are joined by a conference bridge. (A1535-36, 168:11-170:15.) The conference bridge is a telephone device, such that there would be a circuit-switched connection between each conferee and the bridge.



(A1725.) This fits with the district court's construction.

b. A switch cannot serve as an endpoint of a telephonic connection

Interpreting “telephonic connection” as a conferee’s connection to a switch also makes no sense. (*See* Caritas Br. 18.) Notably, Caritas never advocated this interpretation before the district court.

The idea that a *switch* can serve as one end-point of a conference is inconsistent with the way switches operate in a circuit-switched network. Connections are made *through* switches, not to or from switches. There is no such thing as a connection between a switch and a phone; rather, a switch facilitates connections between telephone devices. Indeed, as Caritas’s expert Dr. Forys conceded, when two telephones are connected via a switch, there is no connection until the dialed party answers the phone. (A1436, 138:1-12.) At that time the two callers are connected *through* the switch, not *to* it. (*Id.*) And if either telephone hangs up, the circuit breaks down and the telephonic connection terminates. (A1534, 164:16-17 (“For there to be a circuit switched connection, you drop one side and the whole thing goes down.”).)

The idea that the patent describes switches as the end-points of calls also conflicts with Dr. Forys’s testimony that a bridge, not a switch, serves as the endpoint in the Table I and call-back embodiments. (A1534-36, 162:12-163:19; 166:5-167:5; 168:11-170:15.) A switch completes a circuit *between* the endpoints of a call, while a bridge acts as an *endpoint*. And although a bridge can reside

within a switch, as Dr. Forys noted, it is a separate and distinct part. (A1534, 163:20-164:2.) Notwithstanding these distinctions, Caritas equates the two different devices in its arguments. In support of its assertion that *switches* can serve as the endpoint of a telephonic connection, Caritas incongruously cites three pages of statements by Comcast and Dr. Campbell that a connection is between a conference *bridge* and a conferee telephone device. (Caritas Br. 19-22.)¹²

3. Caritas's proposed construction makes no sense in the context of a local two-party call

At Caritas's urging, the district court construed the asserted claims to cover two-party calls; it did not limit the term "conference" to calls with three or more conferees. (A0018-20.) But a circuit-switched path between caller A and caller B is not "associated with" either caller—it is a single connection between their respective telephone handsets. (A0552 (the switch "implements the [singular] telephone connection between the conferees"); *see also* A1716-20.)

Caritas's construction, on the other hand, makes no sense in the context of an ordinary two-party telephone call. Where caller A places an ordinary call to caller B, how many telephonic connections are there? Under the district court's

¹² Caritas also proposes interpreting "telephonic connection" to mean a connection from the switch 34 to a conference. (Caritas Br. 23.) This construction inherently conflicts with both the idea of conference-to-conferee and the idea of a switch-to-conferee connection.

construction, there is a single telephonic connection from caller A to caller B. Under Caritas's proposed construction, it appears at first blush that there are at least two telephonic connections (from each telephone to the switch). But even that is incorrect, because neither of those connections is associated with a specific conferee—the entire connection from caller A to caller B is established and broken down all at once, and no leg of that connection is associated with one caller to the exclusion of the other. Thus, paradoxically, under Caritas's proposed construction, there is apparently no telephonic connection in an ordinary two-party telephone call.

C. Caritas Has Disclaimed Coverage of VoIP

1. In distinguishing over the White patent, Caritas narrowed the claim scope to calls carried entirely over a circuit-switched network

“The prosecution history can often inform the meaning of the claim language by demonstrating . . . whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1317 (Fed. Cir. 2005). Similarly, “the prosecution history limits the interpretation of claim terms so as to exclude any interpretation that was disclaimed during prosecution.” *Springs Window Fashions LP v. Novo Indus.*, 323 F.3d 989, 994 (Fed. Cir. 2003) (citing *Southwall Techs., Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1576 (Fed. Cir. 1995)). “A patentee may

not state during prosecution that the claims do not cover a particular device and then change position and later sue a party who make that same device for infringement.” *Springs*, 323 F.3d at 995.

In prosecuting the Caritas patent, Caritas narrowed its claims so as to exclude coverage of VoIP. The Examiner rejected the 22 claims Caritas originally submitted in the application that matured into the Caritas patent in light of the White patent. (A1205-08.) As discussed, the White patent discloses a system for making “station-to-station telephone calls” that uses the Internet for transmitting voice signals between central office switches. In response to the rejection, Caritas cancelled the 22 pending claims and submitted 45 new claims that included the term “telephonic connections.” (A1211-17.) On that basis, Caritas contrasted the limitations in the new claims with the White patent. Caritas pointed out that the White patent discloses a way for “a caller to set up and carry out a telephone call over the Internet from telephone station to telephone station” and that “White uses the Internet to carry digitized voice traffic.” (A1218-19.) Again, Caritas concluded: “In no case does White use or suggest a digital computer attached to the Internet to initiate or otherwise control *a telephone connection in a telephone network*.” (A1218 (emphasis added).)

Caritas’s representation that White does not disclose a “telephonic connection” can only be correct if that term means an end-to-end connection in a

circuit-switched network (e.g., the PSTN). Caritas argued in favor of allowance based on the fact that White did not disclose a “telephone connection in a telephone network.” It took this position in an effort to contrast its claimed invention with that of White, which disclosed “us[ing] the Internet to carry digitized voice traffic.” Caritas thereby established a distinction between its claims and the disclosure of the White patent: Caritas’s claims only cover voice signals carried entirely on a circuit-switched network, in contrast to the White patent, which discloses carrying voice signals across both the telephone network *and* the Internet.

The prosecution disclaimer here is similar to that in *Microsoft v. Multi-Tech*. In *Multi-Tech*, the district court held that, based on statements made prosecuting a related patent, Multi-Tech had “disclaimed the transmission of information through a packet-switched network such as the Internet.” 357 F.3d 1340, 1344-45. The court therefore construed the alleged claims to cover a direct point-to-point connection—a circuit-switched connection in the telephone network. *Id.* at 1345. This Court affirmed, based in part on the prosecution disclaimer, which it deemed to have limited the invention to communications over a telephone line. *Id.* at 1349. Because Multi-Tech’s disclaimer mirrors Caritas’s disclaimer—indeed, the two cases address essentially the same underlying claim construction issue—the Court should affirm the district court’s construction of “telephonic connection” and

resultant judgment of non-infringement. Having disclaimed coverage of voice signals carried over an IP network such as the Internet, Caritas cannot assert that its patent covers Comcast's CDV service, which carries voice signals at least in part over an IP network.

2. The prosecution history of the related '328 patent also suggests that the Caritas patent cannot read on VoIP

In prosecuting the '328 patent, Caritas drafted claims to cover the transmission of voice over the Internet. (A1146-47.) In remarks to the Examiner, Caritas noted that its new VoIP claims relied on new matter that had been added in 2000, not the original disclosure. (A1153.)¹³ Caritas thereby acknowledged that the 1996 disclosure did not support claims covering VoIP, but only supported the transmission of voice signals entirely over a circuit-switched network. Since Caritas claims a 1996 priority date for its asserted claims, (A1305-06.), and has acknowledged that its 1996 disclosure did not support VoIP claims, the Caritas patent cannot be read to cover Comcast's VoIP CDV service.

For these reasons, CDV cannot infringe the Caritas patent.

¹³ Caritas chose this date to avoid invalidating prior art that issued between 1996 and 2000, including, for example, the CableLabs PacketCable 1.0 specification, which issued in 1999 and relates to the interconnection of VoIP and PSTN calls. See <http://www.packetcable.com/specifications/specifications10.html>.

D. The District Court Properly Interpreted the Existing Limitations

Caritas erroneously contends that the district court imported two limitations by construing a “telephonic connection” to be “between telephone devices.” Caritas focuses this argument on the language of claim 33. (Caritas Br. 44.) Caritas first contends that claim 33 recites “making a connection from a conference ‘to at least *one* conferee telephone device’—not making a connection *between* telephone devices.” (*Id.* (emphases added).) Simply put, Caritas argues that because the claim construction calls for a path *between two* telephone devices, the construction conflicts with the language of claim 33, which calls for a connection *to at least one* telephone device.¹⁴ Caritas also points out that, unlike claim 33, claims 1 and 17 do not contain the express limitation “to at least one conferee telephone device. (*Id.* at 43.) Thus, according to Caritas, claims 1 and 17 also suggest a connection must only be established “for a conference” and should not be construed as having any specific endpoints. (*Id.* at 43-44.)

The problem with both of these arguments is that one inherently “connects” one thing to another by putting something between them; in other words, one

¹⁴ This is also a claim construction argument Caritas raises for the first time on appeal. Caritas never argued below that Comcast’s proposal imported limitations into the construction of “telephonic connection.” (See A0494-528; A1490-516.)

connects *two* things. In the context of the patent, one connects telephone devices by putting a dedicated circuit-switched path between them.

Indeed, this Court has already concluded that a circuit-switched connection is a connection *between two* defined endpoints: “[a] ‘circuit-switched network,’ such as the Public Switched Telephone Network, is one in which a connection is established from one user to the other such that the users have exclusive and full use of the circuit until the connection is released.” *Multi-Tech*, 357 F.3d at 1344 n.2. Thus, construing the term “telephonic connection” as the path “between telephone devices” simply comports with the ordinary meaning of a circuit-switched connection, and does not import any additional limitation from the specification. *See Searfoss v. Pioneer Consol. Corp.*, 374 F.3d 1142, 1150 (Fed. Cir. 2004) (affirming district court’s construction of the claim term “connecting” to mean a “connection between” two end points).

E. Claims 9 and 10 Regarding Adding and Removing Conferees Support the District Court’s Construction

Caritas argues that the dependent claims conflict with the district court’s claim construction. (Caritas Br. 14-15.) Specifically, Caritas contends that the claims that require adding a conferee to a conference (*i.e.*, claims 9, 25, and 38), and the claims that require removing a conferee from a conference (*i.e.*, claims 10, 26, and 39), indicate that a telephonic connection is associated with one conferee rather than between telephone devices. (Caritas Br. 15.)

The chart below sets forth exemplary claim 9 in relevant part, with the term “telephonic connection” replaced by the district court’s construction in the center column and Caritas’s proposed construction in the right column:

Claim	District Court Construction	Caritas’s Proposed Construction
9: the switch interface transmits additional telephonic control signals to the dial up communication network in response to said additional digital control signals to establish a <i>telephonic connection</i> for the added conferee (A0085.)	the switch interface transmits additional telephonic control signals to the dial up communication network in response to said additional digital control signals to establish a <i>circuit-switched path between telephone devices on a circuit-switched telephone network</i> for the added conferee	the switch interface transmits additional telephonic control signals to the dial up communication network in response to said additional digital control signals to establish a <i>connection over the PSTN associated with a specific conferee</i> for the added conferee

As the comparison shows, the district court’s definition fits coherently with the language of claim 9. By contrast, Caritas’s proposed definition introduces redundancy with respect to the phrase “for the added conferee” as Caritas already requires that the connection be “associated with a specific conferee.” Because Caritas’s proposed definition renders that phrase meaningless or redundant, its construction is “presumably incorrect.” *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1119 (Fed. Cir. 2004).

The district court’s claim construction accords with the language of claim 9. For example, adding a connection to a conferee using the three-way conferencing

feature in a local switch involves establishing a second path between telephone devices: conferee A (already connected to conferee B) creates another connection between his telephone handset to the telephone handset of a third-party, conferee C. (A1407.) Thus, conferee A establishes a circuit-switched path “between telephone devices” when adding a single conferee. (*Id.*)

The district court’s construction similarly works for claim 9 in the context of using a conference bridge. Adding a conferee to a conference involves setting up a connection between the conference bridge—a type of telephone device—and a conferee’s telephone handset—a different type of telephone device. (A1408.) In other words, to add a conferee when using a conference bridge, one must establish a circuit-switched path “between telephone devices”—the conference bridge and a telephone handset. So, regardless of whether one uses a switch or a bridge, adding a conferee requires establishing at least one circuit-switched path between telephone devices. As such, the district court’s claim construction in fact fits with claim 9.

F. The District Court’s Construction of “Telephonic Connection” Encompasses the Disclosed Embodiments

1. The district court’s claim construction is consistent with the use of the term “connection” in the embodiment of Table I

Other than the use of the term “telephone connection” in the Abstract, the specification does not use the term “telephonic connection.” As Caritas points out,

however, the specification repeatedly uses the term “connection” by itself. (Caritas Br. 15.) Caritas contends that the use of the term “connection” in relation to the first preferred embodiment, and particularly in Table I, conflicts with the district court’s claim construction. (Caritas Br. 17.)

Table I contains thirteen Command/Response codes for, among other things, establishing, disconnecting, or checking the status of conferee connections. For example, Table I lists an Establish Connection (EC) command code, which instructs the system “that a specified number be connected to a conference.” (A0084, col. 3, ll. 19-22.) Similarly, Table I lists a Disconnect (DC) Command code, which instructs the system “to disconnect a conference members [sic] connection.” (A0084, col. 3, ll. 36-40.)

As noted above, the way the specification uses the term “connection” in relation to the first preferred embodiment is consistent with the district court’s claim construction. Dr. Forsys testified that the Table I and call-back embodiments require using a conference bridge. (A1535-36, 168:11-170:15.) With that understanding, each added or disconnected “connection” is indeed a “telephonic connection” as the district court has construed that term. The “connection” is a circuit-switched path between telephone devices—more specifically, between the conference bridge and a conferee’s telephone handset.

Notably, the district court's construction is not constrained to the use of a bridge, but also encompasses the use of the three-way conferencing feature in a switch. An added or disconnected "connection" is a "telephonic connection"—a dedicated, circuit-switched path between the telephone handset of the party already involved in a conference and the telephone handset of the added conferee.

2. The "call-back" embodiment is also consistent with the district court's claim construction

In the call-back embodiment, the Conference Meister directs that two telephones be connected—the Conference Meister's phone and another phone. (A0084.) The two telephones are connected by establishing two "telephonic connections"—one from the bridge to the Conference Meister, the other from the bridge to the other party. For this reason, the specification talks about connections in plural. (See A0085, col. 5, ll. 13, 19.) It more explicitly states that "each connection is shown as a separate call." (A0085, col. 5, ll. 19-21.)

While the specification states that the conferee connections originate from the "switch 34," this can only be true if the switch is considered to be a bridge. Indeed, Dr. Forys testified that implementing the call-back embodiment requires the use of a bridge. (A1534-35, 165:1-166:21.) That is because a connection can only be made *through* a switch, not to or from a switch. Dr. Forys also testified

that a switch and a bridge could be co-located, with the bridge being a distinct component. (A1534, 163:20-164:2.) As such, the “switch 34” should be considered a bridge. Indeed, the specification notes that, in the case of the call-back embodiment, the “switch” has to be assigned a telephone number so that it can serve as the end point for each call, making clear that the “switch” is really a telephone device.

In light of the need to use a conference bridge to implement the call-back embodiment, the district court did not read out this embodiment with its construction of “telephonic connection.” In the call-back embodiment, a dial-out bridge creates one telephonic connection to the Conference Meister’s telephone and another telephonic connection to the selected third-party’s telephone. The bridge is itself a telephone device—it serves as an endpoint in the telephone network—and can connect to other phones in the conventional manner. Consequently, the district court’s construction encompasses the call-back embodiment, which has circuit-switched connections “between telephone devices”—the bridge and the conferee telephone handsets.¹⁵

¹⁵ In any event, the argument that the district court’s construction of “telephonic connection” does not comport with the call-back embodiment is less relevant in light of the fact that Caritas has another patent that explicitly claims that embodiment, U.S. Patent No. 6,480,474.

3. Caritas cannot rely on the VoIP embodiment added to the specification in 2000 because it claims a 1996 priority date

In its brief, Caritas argues that the embodiment that discloses a circuit-switched connection from a telephone “to a telephone system/Internet interface 33’ and 34’” is excluded from the district court’s claim construction. (Caritas Br. 25.) This argument contradicts Caritas’s assertion to the district court that the Figure 4 VoIP “disclosure added in 2000 has no bearing on the current claims.” (A.1507.) And while Comcast agrees that this embodiment is not encompassed by the claim construction, there is no reason it should be. Caritas cannot rely on the VoIP embodiment in Figure 4 to support its construction of telephonic connection because Caritas claims priority back to the original August 26, 1996 provisional application in this case. (A1305-06.) Instead, Caritas is limited to relying on the original 1996 disclosure in construing the claims. *Phillips*, 415 F.3d 1313 (requiring claim construction as of effective application date); *see nCube Corp. v. SeaChange Int’l, Inc.*, 436 F.3d 1317, 1327 (Fed. Cir. 2006) (same); *Pfizer, Inc. v. Teva Pharm. USA, Inc.*, 429 F.3d 1364, 1375 (Fed. Cir. 2005) (same). In turn, any

claim interpretation that relies on Figure 4 would have a 2000 effective filing date rather than a 1996 effective filing date.¹⁶ *Id.*

In sum, because Caritas claims a 1996 priority date in this case, (A1306), it cannot rely on the VoIP embodiment of Figure 4 to contest the district court's claim construction. Indeed, it is ironic that Caritas tries to rely on its disclosure of Figure 4 and the accompanying text on June 3, 2000, as supporting its claim construction position. That 2000 disclosure post-dates by almost seven months the publication of CableLabs PacketCable 1.0 specification, which deals with the interconnection of VoIP and PSTN calls.¹⁷

¹⁶ In any event, Figure 4 is fundamentally inconsistent with the disclosures of the 1996 provisional application. While the specification states that Figure 4 shows the information of Figure 1 in greater detail, the two drawings illustrate fundamentally different systems. Figure 1 shows all telephones connected directly to the telephone network, with all of the voice traffic passing over the telephone network. (A0079.) The accompanying text explains that "the telephones are tied into the telephone network in a conventional manner." (A0083.) In contrast, in Figure 4 the telephone 28 is connected to a PC, not the telephone network, and the PC is connected to the Internet. (A0082.) The description accompanying Figure 4 states that after the audio message is transmitted through the Internet, it arrives at "PC 28" [sic] of Figure 1 "where software decodes the audio message 124, rings the telephone 28, and provides an analog audio signal for telephone 28." (A0084, col. 4, ll. 35-39.) But in Figure 1, PC 26 cannot ring telephone 28 because they are not connected. And, unlike Figure 4, Figure 1 nowhere suggests connecting a telephone to the Internet (via a PC) rather than to the telephone network.

¹⁷ See <http://www.packetcable.com/specifications/specifications10.html>.

G. The District Court's Claim Construction Is Consistent With the Nature of Circuit-Switched Connections

Caritas erroneously claims the district court's construction of "telephonic connection" is internally inconsistent because it allows for multiple paths, and that these multiple paths conflicts with the idea that a connection is fixed and dedicated to a conference. (Caritas Br. 48-49.)

In the case of the three-way conferencing feature of a switch, the circuit-switched connections actually carry multiple voice-signal *paths*. Three-way conferencing allows one telephone *line* to connect conferee A with both conferee B and conferee C. The connection from conferee A to conferee B is a circuit-switched connection, as is the connection from conferee A to conferee C. The voice signals are mixed together at the switch, such that their *paths* overlap on a single *line*. The district court recognized this distinction, noting that, while physical *lines* could not overlap, *paths* could. (A0028.) So, even if a circuit-switched connection is like a fixed pipe, the physical wire carries multiple *paths* between telephone devices; while "there's just one route over which voice signals can travel," (A1822), that one route can carry the voice signals of multiple conferees.

In the example Caritas uses in its brief, which was drawn by Comcast's expert Dr. Campbell, four conferees connected without a bridge results in six different telephonic connections—circuit-switched paths between telephone

devices. (A1411-13.) This was a hypothetical example that a switch would not actually support. The hypothetical depended on the assumption that the voice signals would be mixed together by the switches, as is done in a simple three-way conference, allowing the conversation to be carried over a single telephone line. In this hypothetical situation, the circuit-switched *path* for the various different interconnections could overlap on one single line because of the mixing at the switches.

If using a conference bridge, there is no technical need for overlapping circuit-switched paths between telephone devices. A telephonic connection exists between the bridge and each conferee; specifically, a circuit-switched path exists between a conference bridge and the conferee telephone handsets. For a conference with four conferees, there are four telephonic connections. None of these connections overlaps.

In sum, the alleged problem with the district court's construction isn't technically a problem at all. No paths overlap in simple two-party calls. Nor do they overlap when using a conference bridge to connect callers—which Dr. Forys said was required to implement the call-back embodiment. In the limited situation where three-way conferencing is used, *paths* only overlap in the sense that the switch mixes the voice signals together so they can travel in parallel over the same fixed circuit-switched connection.

II. “Connection Status Information”

Because the district court properly construed “telephonic connection” to mean “a circuit-switched path between telephone devices on a circuit-switched network,” it also properly ruled that “connection status information” means information regarding the status of “a switched circuit path between telephones.”¹⁸ The propriety of this portion of the claim construction tracks the construction of “telephonic connection,” which in turn tracks the construction of “dial up communication network” as “a circuit-switched telephone network.” Moreover, as discussed above, switched circuit connections go through a switch—not to a switch—allowing two telephone devices to communicate. Put another way, a switch establishes a circuit path between telephone devices to carry voice transmissions. For these reasons, the district court correctly concluded that “connection status information” relates to the “telephonic connection”—the circuit-switched path between telephones—and construed the term accordingly.

¹⁸ In keeping with the construction of “telephonic connection,” the term “telephone” as used in construing “connection status information” should be understood to mean “telephone devices.”

CONCLUSION

For the reasons discussed above, Comcast respectfully asks the Court to affirm the district court's construction of "telephonic connection" and "connection status information," and therefore affirm the judgment of non-infringement.

Dated: March 5, 2007

Respectfully submitted,

Daralyn J. Durie
Asim M. Bhansali
Matthias A. Kamber
KEKER & VAN NEST, LLP
710 Sansome Street
San Francisco, CA 94111-1724
Telephone: (415) 391-5400
Facsimile: (415) 397-7188

Attorneys for Defendants-Appellees
Comcast Corporation

CERTIFICATE OF COMPLIANCE

Defendants-Appellees Comcast Corp.; Comcast Cable Communications, LLC; Comcast IP Phone, LLC, d/b/a Comcast Digital Voice; and Comcast IP Phone II, LLC, d/b/a Comcast Digital Voice submit their brief under Rule 28(b) of the Federal Rules of Appellate Procedure and Rule 28(b) of the Federal Circuit Rules. As required by Rule 28(e)(3) of the Federal Circuit Rules, I hereby certify that the brief complies with the type-volume limitation therein provided, and I further certify that the foregoing BRIEF OF COMCAST DEFENDANTS-APPELLEES contains 12,914 words. In preparing this certificate, I have relied on the word count of the word processing system used to prepare this brief, including headings, footnotes, and quotations.

Dated: March 5, 2007

Respectfully submitted,

Matthias A. Kamber

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on March 5, 2007, two (2) true and correct copies of the foregoing BRIEF FOR COMCAST DEFENDANTS-APPELLEES were served by UPS on the following counsel:

Kerry L Timbers
Lee Carl Bromberg
Karen A. Buchanan
Meredith L. Ainbinder
Bromberg & Sunstein LLP
125 Summer Street
Boston, MA 02110

I also hereby certify that on this 5th day of March, 2007, twelve (12) bound copies of the foregoing BRIEF FOR COMCAST DEFENDANTS-APPELLEES were filed, via hand delivery, in the Office of the Clerk, United States Court of Appeals for the Federal Circuit.

Matthias A. Kamber